

of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

[53 FR 26759, July 15, 1988; 53 FR 27798, July 22, 1988, as amended at 56 FR 66954, Dec. 27, 1991; 58 FR 48954, Sept. 21, 1993; 59 FR 44033, Aug. 26, 1994]

§ 1030.8 Nonpool plant.

Nonpool plant means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not an other order plant, a producer-hand-

ler plant, or an exempt distributing plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

(e) *Exempt distributing plant* means a distributing plant operated by a governmental agency.

§ 1030.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant of another handler pursuant to § 1030.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; or

(g) Any person in his capacity as a broker negotiating a purchase or sale of fluid milk products or fluid cream products from or to a person described in paragraph (a) or (d) of this section.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38582, July 29, 1977]

§ 1030.10 Producer-handler.

Producer-handler means any person who operates a dairy farm and a distributing plant and who has route disposition in the marketing area of only fluid milk products of such person's own production or fluid milk products received from pool plants: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all

dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is received at a pool plant or diverted pursuant to § 1030.13.

(b) "Producer" shall not include:

(1) A dairy farmer who is a government and has nonproducer status for the month pursuant to § 1030.19;

(2) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1030.44(a)(8)(ii) and the corresponding step of § 1030.44(b);

(4) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer with respect to milk produced by him that is received at a handler's pool plant during the months of January through July if any milk from the same farm operated by such dairy farmer was a receipt of producer milk in any "payback" month during the preceding year under another order that provided for a seasonal incentive payment plan whereby funds previously withheld in the computation of the uniform price to producers were paid back to producers through the uniform price computation in subsequent months of the year.

[39 FR 15405, May 3, 1974, as amended at 42 FR 38582, July 29, 1977]

§ 1030.13 Producer milk.

Producer milk means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from producers by being physically unloaded into processing facilities, a storage tank, or another tank truck, as further provided below:

(1) Any shrinkage of milk received from producers' farms which was not unloaded in a pool plant shall also be producer milk under this paragraph; and

(2) In the event that part of a load of milk is first received at another plant(s) and the remaining part is then unloaded in the pool plant, the quantity of milk so received at each such plant shall be prorated over the total quantity of milk picked up at each producer's farm.

(b) Received at a pool plant from a handler described in § 1030.9(c).

(c) Received by a handler described in § 1030.9(c) to the extent of the shrinkage of skim milk and butterfat received from producers' farms which was not received in a pool plant pursuant to paragraph (b) of this section. In applying §§ 1030.52 and 1030.75, such skim milk and butterfat shall be deemed to have been received at the location of the pool plant to which delivery is normally made.

(d) Diverted by the operator of a pool plant, or by a handler described in § 1030.9(b), to another pool plant or to a nonpool plant (that is not a producer-handler plant), subject to the following conditions:

(1) During each of the months of August through January, milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

(3) The quantity of each producer's milk to be considered as diverted milk when a portion of a tank load of milk,